IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5231 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYESH MAGANALAL VADHER

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5231 of 2003

MR PANKAJ R DESAI for Petitioner No. 1-3

MR. SUDHANSHU PATEL, LD. APP for Respondent No. 1

MR MA BUKHARI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 06/09/2004

ORAL JUDGEMENT

1. Heard Learned counsel Mr. Pankaj Desai for the petitioners, Mr. M.A. Bukari, learned counsel or the respondent no.2, and learned APP Mr. Sudhanshu Patel for the respondent State.

2. This petition has been moved by the original accused in Inquiry Case being C.R. No: 14/ 2003 pending in the Court of Learned JMFC. Morvi. The respondent no. 2 herein is the original complainant. In the complaint respondent no.2 has made allegations against all the 3 petitioners that they have inflicted mental as well as physical cruelty on her during her married life with petitioner no.1 herein- Jayesh Maganlal Vadher and further prayed that all the 3 petitioners - original accused of the criminal case may be convicted for the offence punishable under section 498-A of I.P. Code.

3. Present petition is pending since 2003 and this Court has adjourned the proceedings on number of occasions. However, in view of the interim relief granted in favour of the present petitioners, proceedings of inquiry case has remained stayed.

4. I have gone through the nature of allegations made in the complaint as well as in the present petition. This Court is informed that the parties have settled the matter out of the Court and as per the settlement, both, i.e. husband Jayesh -petitioner no.1 herein and original complainant & wife Purvi Jayesh Vadher respondent - no.2 herein had approached the Family Court, Ahmedabad with an application under section 13-B of the Hindu Marriage Act and they have obtained divorce by mutual consent. Copy of the application filed before the Court has been read over before this Court by Mr. Desai, learned counsel appearing for the petitioners and this Court is convinced that it was one of the conditions that the respondent no.2 wife shall not pursue the criminal proceedings initiated in the Court of Learned JMFC, Morvi in Inquiry Case no. 14 of 2003. By way of permanent alimony Rs.3-00 lacs (Rs. Three lacs only) has been deposited with the Family Court. This Court is further informed that in a couple of days the respondent no.2 wife shall get the amount. As the present petitioners and especially petitioner no.1 Jayesh Maganlal Vadher has not resisted withdrawal of the amount.

5. It is rightly and jointly submitted by the counsel for the parties that the ratio of the decision of the Apex Court in case of B.S. JOSHI AND ORS Vs. STATE OF HARYANA & ANR. reported in 2003 (2) G.L.H. pg. 351 would be applicable in the present case and this Court in

exercise of powers vested in it under Article 226/227 of the Constitution of India read with section 482 of Cr.P.C. can quash the complaint. The Apex Court has observed in the cited decision that the scheme of section 320 would not be a bar in quashing the FIR in exercise of inherent powers vested in the High Court. Ofcourse, the present petition is a petition under section 482 of Cr.P.C. The scheme and the section clearly empowers this Court to see that substantiative justice is done and or the miscarriage of justice is prevented. So, without entering into the technical exercise of relegating parties to file separate proceedings under Article 226 / 227 of the Constitution of India the inquiry proceeding being C.R. No: 14/2003 pending in the Court of Learned JMFC, Morvi can be turned down as the parties have settled the matter out side the Court. Learned APP appearing for the State has nothing to add in the matter.

6. It is relevant to note that the counsel appearing for the parties, namely petitioners as well as respondent wife have not disputed the settlement on the fact that the amount of Rs.3-00 lacs (Rs. Three lacs only) has been deposited and the same has been paid to the original complainant - Purvi.

7. In view of the above set of facts & circumstances the petition is allowed. Criminal Case No. 14/2003 pending before the Learned JMFC, Morvi is quashed. Rule is made absolute. Copy of the writ of this order be sent to Learned JMFC, Morvi and Morvi Police Station. Direct service is permitted.

Dt: 6-9-2004 (C.K. BUCH, J)

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